

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the matter of:)
)
SAEID SHAFIZADEH)
)
COMPLAINANT)
)
v.)
)
CINGULAR WIRELESS-KENTUCKY)
)
DEFENDANT)

MAR 31 2004

PUBLIC SERVICE
COMMISSION

CASE NO.: 2003-00400

COMPLAINANT'S OPPOSITION TO CINGULAR'S REQUEST
TO SUSPEND SCHEDULING ORDER

Cingular has requested the Public Service Commission ("Commission") to suspend the deadlines set by the Scheduling Order of February 24, 2004 because it believes "no factual questions exist on issues that are within the Commission's jurisdiction." Cingular, further claims that other issues raised by the Consumer are "outside the parameters of a dispute concerning the service provided. . . ," and makes the conclusory assertion that service issues are ripe for determination without a formal hearing.

Consumer disagrees and opposes the suspension of the Scheduling Order and the termination of discovery that should provide answers to service issues raised, and finally, Consumer opposes the substitution of an informal hearing in lieu of a formal hearing he has procedurally requested.

Consumer has complained to the Commission about the Cingular's established policies and practices in providing service including the use of social security number to restore service that was wrongfully suspended. Though, Cingular has made these assertions, Consumer has not stipulated that the interruption of his wireless service was the result of inadvertent application of his payment or the Cingular's mistaken belief that Consumer had not paid for the service.

The KRS 278.040(2) establishes the Commission's exclusive jurisdiction over the regulation of service of all utilities in this state; and it specifically states that the said statute does not limit or restrict the police jurisdiction, contract rights, etc. The KRS 278.040(3) authorizes the Commission to investigate the **methods** and **practices** of utilities to require them to conform to the laws of this state. The KRS 278.260(1) confers original jurisdiction upon the Commission over the ". . . **practice** or **act** affecting or relating to the service of the utility. . . ." The statute further prescribes that "[n]o order affecting the rates or **service** complained of shall be entered by the commission without a formal public hearing."

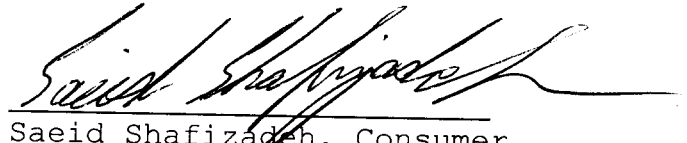
Consumer has complained to the Commission about the Cingular's established policies and practices in providing service including failure to employ sufficient personnel with adequate training to handle complaints; the use of social

security number to restore service that was wrongfully suspended; broadcasting false and defamatory messages about the credit of the Consumer to third parties over the phone that was not used by the Consumer; using telephone services that block Cingular's number from detection by the caller I.D. services when contacting consumers. All of these issues are clearly practices or acts affecting or relating to the Cingular's service. Moreover, while the prayer of the Complaint clearly states that a separate action for damages will be initiated through the judicial process, such intention does not deprive the Commission of jurisdiction to hold formal hearing on matters clearly within the scope of that jurisdiction and properly before it. Additionally, the Complaint's prayer does not seek the Commission to adjudicate Consumer's contract claim for any unliquidated damages, hence, *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App. 1983) is inapplicable.

Accordingly, since the Commission has original and exclusive jurisdiction over all the issues raised in the Consumer's Complaint, it should reject and dismiss Cingular's claim that the Commission lacks jurisdiction over matters raised in the Complaint concerning Cingular's established policies and practices in providing service; and it should reinstate the Scheduling Order and hold a formal hearing.

March 27, 2004, Louisville, Kentucky

Respectfully Submitted

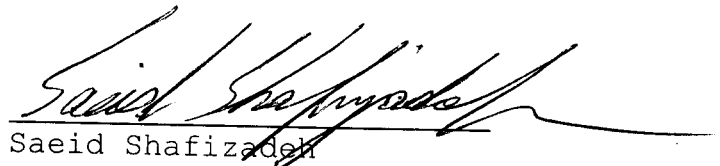


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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was served in U.S. Mail with First Class postage prepaid on this March 27, 2004, addressed to:

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